

August 24, 2020

The Honorable Greg Abbott
Governor of Texas
1100 San Jacinto
Austin, TX 78701

Via email: greg.abbott@gov.texas.gov

Dear Governor Abbott,

We are civil rights organizations that work directly with voters across this state and advocate for a free and fair democracy in Texas. We write regarding the recent admission by the United States Postal Service (“Postal Service”) that it cannot guarantee delivery of voters’ mail-in ballots within the timeframe mandated under Texas state law. We request that you immediately exercise your emergency powers during the continuing coronavirus pandemic to take the steps outlined below, in order to ensure that every Texas voter who complies with the requirements for voting by mail will have their ballot accepted and counted by election officials this November.

Last month, the Postal Service wrote to Texas Secretary of State Ruth Hughs warning that “under our reading of Texas’ election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service’s delivery standards,” which “creates a risk that [mail-in] ballots requested near the deadline under state law will not be returned by mail-in time to be counted.”¹ The Postal Service “strongly recommends” that “voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum,” and that “domestic voters should generally mail their completed ballots at least one week before the state’s due date” (those deadlines being November 3 for ballots without a postmark and November 4 for ballots with a postmark).² As the Postal Service made clear, “there is a significant risk that, given the delivery standards for First-Class Mail, a completed ballot postmarked on or near Election Day will not be delivered in time to meet the state’s receipt deadline of November 4.”³ Although the Postal Service has recently indicated it will refrain from certain initiatives that sparked an outcry, it has not revoked this letter nor indicated that its warnings no longer apply, and neither has it committed to restoring all the cuts to Postal Service equipment, staffing, or other infrastructure that it has made so far.⁴

It would be a tragedy for any Texas voter to do everything required of them under state law, yet wind up disenfranchised because of governmental failures beyond their control. Every Texan deserves to have full confidence that they can cast a ballot that is fairly and accurately counted. We

¹ Letter from Thomas Marshall to Secretary of State Ruth Hughs, July 30, 2020, at 1.

² *Id.* at 1-2.

³ *Id.* at 2.

⁴ See Postmaster General Louis DeJoy Statement, Aug. 18, 2020, available at <https://about.usps.com/newsroom/national-releases/2020/0818-postmaster-general-louis-dejoy-statement.htm>.

must all work together to do everything in our power to prevent Texas voters from falling into this trap before it is too late.

But there is something you can do immediately to help Texas voters avoid this situation. Since the pandemic began, you have claimed and exercised broad authority under Section 418.016 of the Texas Government Code to suspend various provisions of the Election Code when, in your judgment, doing so would promote public safety. You have issued proclamations moving the date of the 2020 Primary Runoff Election from May 26 to July 14, 2020⁵; added five days to early voting for the 2020 Primary Runoff Election⁶; added six days to early voting for the November 2020 General Election⁷; and granted voters the ability to deliver a mail-in ballot in person to the early voting clerk's office prior to Election Day.⁸ Assuming that Section 418.016 provides a grant of authority for such proclamations, there are a series of further steps you could take that would also fall within such powers and would immediately help Texas voters.

We urge you to take, at a minimum, the following steps:

- **Require county election officials to accept mail-in ballots up to seven days after Election Day, as long as they have either been postmarked by 7 p.m. on Election Day or are delivered via a type of mail not subject to postmarking.**⁹ This would give voters the entire amount of extra time that the Postal Service has indicated voters need to ensure delivery of their ballots, and would be consistent with timelines already established for overseas mail-in ballots and curing of provisional ballots that already require Early Voting Ballot Boards to meet and approve ballots.
- **Eliminate the requirement that, for applications for mail-in ballots submitted electronically (such as by fax or email), that the hard copy must also be mailed and received by the early voting clerk no later than the fourth business day thereafter, and mandate that electronic submission of an application for a ballot by mail is sufficient.** Electronic submission of an application for a mail-in ballot provides election officials with all

⁵ Proclamation of Governor Greg Abbott, Mar. 20, 2020, available at https://gov.texas.gov/uploads/files/press/PROCLAMATION_COVID-19_May_26_Primary_Runoff_Election_03-20-2020.pdf.

⁶ Proclamation of Governor Greg Abbott, May 11, 2020, available at <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-regarding-july-4th-early-voting-for-special-runoff-elections>

⁷ Proclamation of Governor Greg Abbott, July 27, 2020, available at <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-extending-early-voting-period-for-november-3rd-election>

⁸ *Id.*

⁹ For instance, such mail would appear to include “mailings bearing a permit, meter, or precanceled stamp for postage, [and] pieces with an indicia applied by various postage evidencing systems.” *See* Handbook PO-408 - Area Mail Processing Guidelines 1-1.3, available at https://about.usps.com/handbooks/po408/ch1_003.htm.

the information they need to process the application, without holding voters' applications hostage to this additional, unnecessary step of submitting them in the mail.

- **Allow voters to deliver a marked mail ballot in person to secured, county-controlled boxes located at early voting sites or early voting clerk offices, consistent with how ballots are deposited in the mail under all other circumstances.** Voters need as many options as possible to return their ballots that do not rely solely on the mail, given the Postal Service's recent warning. Although your recent order providing that voters can return their ballots to the early voting clerk's office is a good first step, the current situation requires an expansion of delivery locations to guarantee that personal delivery is a viable option for all who want it, and enabling delivery to any early voting location would merely be a modest extension of your July 2020 proclamation. Moreover, voters do not currently need to present photo ID to drop their ballot in their personal, unsecured mailbox or in a USPS mailbox. There is no rationale for not similarly allowing voters to deposit their ballots in secured, county-controlled boxes. These boxes can be routinely monitored and controlled if they are located at early voting sites and/or early voting clerk offices. Given the increased number of Texans who will likely take advantage of this, the requirement to go inside and present an ID when submitting a ballot should be waived to cut down on lines and the burden on elections staff, and this would conform to how voters are otherwise allowed to deposit their ballots in the mail. It should also be noted that there are already procedures in place requiring voters who have not previously had their IDs verified to do so if they are voting for the first time by mail, and these procedures would remain in place.

This is no ordinary election year. Texas voters are facing a set of unique challenges as they set out to cast their ballots this fall. You have the power to alleviate those problems and reassure Texans that they will be able to vote safely and fairly this November, and we ask that you act without delay.

Sincerely,

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